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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOE TELEVARA BARAJAS,

Defendant and Appellant.

F068683

(Merced Super. Ct.
No. CRM000508)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. Marc A. Garcia, Judge.

Robert L.S. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Detjen, J. and Smith, J.

INTRODUCTION

Appellant/defendant Joe Televara Barajas pleaded no contest to assault with a firearm, admitted a firearm enhancement, and was sentenced to 12 years pursuant to a negotiated disposition. In two prior appeals before this court, we ordered an additional day of presentence credit and reversed a victim restitution order because defendant was not present at the hearing. At the renewed hearing on victim restitution, the court and the parties concluded that another victim restitution order could not be imposed. On appeal from that order, his appellate counsel has filed a brief that summarizes the facts with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We affirm.

FACTUAL AND PROCEDURAL HISTORY¹

Case No. MF47715

On April 24, 2008, defendant pleaded no contest to making a criminal threat (Pen. Code, § 422),² and admitted a prior prison term allegation (§ 667.5, subd. (b)); additional charges were dismissed. Defendant was sentenced to three years. The court suspended execution of the sentence and placed defendant on probation for three years, with service of nine months in jail. The court also imposed a \$200 restitution fine (§ 1202.4, subd. (b)).

Case No. CRM00508

On October 14, 2008, defendant shot Joseph Salas in the leg and shot and slightly wounded Chad Villanueva.

¹ On April 22, 2014, this court took judicial notice of the records in defendant's prior appeals in case Nos. F061618 and F065506, and this court's nonpublished opinion in case No. F061618. We further note this court's nonpublished opinion in case No. F065506 is contained in the instant appellate record of No. F068683.

² All further statutory citations are to the Penal Code unless otherwise indicated.

On May 8, 2009, a complaint was filed in case No. CRM000508, which charged defendant with count I, attempted murder of Salas (§§ 187, 664); count II, assault with a firearm on Villanueva (§ 245, subd. (a)(2)); and count III, possession of a firearm by a felon (former § 12021, subd. (a)(1)); with gang and firearm enhancements alleged as to counts I and II. By committing these new offenses, defendant violated probation in case No. MF47715.

On April 7, 2010, defendant pleaded no contest to count I, attempted murder of Salas, and admitted amended enhancements as part of a plea agreement for a total prison term of 16 years. All remaining counts and enhancements were dismissed.

On November 8, 2010, defendant was permitted to withdraw from the plea bargain. The parties then entered into a new plea agreement. Defendant pled no contest to count II, assault with a firearm on Villanueva, and admitted a section 12022.5, subdivision (a) firearm enhancement, with an indication that his sentence would not exceed 12 years. The court dismissed the other charges. Thereafter, he was sentenced to two years for assault with a firearm, with a consecutive term of 10 years for the firearm enhancement. The court imposed a \$1,000 restitution fine (§ 1202.4, subd. (b)) and imposed and suspended a \$1,000 parole revocation fine (§ 1202.45). The court reserved jurisdiction on the issue of victim restitution.

At the same sentencing hearing, the court revoked defendant's probation in case No. MF47715 and imposed the previously suspended sentence of three years. The court imposed a \$400 restitution fine (§ 1202.4, subd. (b)), and imposed and suspended a \$400 parole revocation fine (§ 1202.45).

Defendant filed a timely notice of appeal (case No. F061618).

First Appeal (No. F061618)

On March 26, 2012, this court filed a nonpublished opinion in case No. F061618. As to the lower court's case No. MF47715, we agreed with the parties' concession that when the superior court originally sentenced defendant, it imposed a \$200 restitution fine.

However, when it subsequently revoked probation and imposed the previously suspended sentence, it improperly imposed a \$400 restitution fine and \$400 parole revocation fine. We held that the previously imposed fine remained in force and effect after defendant violated probation, and directed the superior court to reduce the two restitution fines to \$200.

As to case No. CRM000508, we agreed with the parties' concession that defendant was entitled to one extra day of presentence credit.

We ordered the superior court to amend the abstract of judgment as to both matters and otherwise affirmed the judgment.

Victim Restitution Hearing

On May 16, 2012, the district attorney filed a notice of motion for a restitution hearing in case No. CRM000508, and requested reimbursement of the Victim Compensation and Government Claims Board for \$10,778.40, which had been paid for a victim's medical expenses.

On June 1, 2012, the court conducted the restitution hearing. Defendant was not present and did not waive his presence. His attorney identified herself as “ ‘standing in for [defendant] who is not present. He is in custody in a state prison facility.’ ” Counsel stated that she had reviewed the claim and “ ‘it appears to be appropriate.’ ” The court imposed restitution of \$10,778.40, based on medical expenses for Salas, who was the victim alleged in count I, the charge which had been dismissed as part of the plea agreement.

Second Appeal

On July 30, 2012, defendant filed a timely notice of appeal from the restitution order (F065506).

On July 11, 2013, this court filed a nonpublished opinion in case No. F065506, and reversed the restitution order because defendant was not present at the hearing. In addition, we found counts I and II alleged different victims; defendant pleaded no contest

to count II and that victim had minor injuries; the medical expenses were for the victim of count I, but that charge was dismissed without a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, and such restitution may not have been contemplated by the plea bargain. We noted defendant could have raised these issues had he been present at the hearing. We reversed the restitution order, and remanded the matter for a duly noticed restitution hearing at which defendant would be present or validly waive his presence.

Second Restitution Hearing

On November 20, 2013, the court conducted another restitution hearing after providing appropriate notice. Defendant was present with his attorney. The court and the parties agreed there was no basis for the medical restitution order. The order for \$10,778.40 was erroneously based on the medical expenses for the victim alleged in count I, whereas defendant had pled no contest to count II, which involved another victim. The court concluded the order should be stricken.

On or about January 10, 2014, defendant filed another notice of appeal from the hearing of November 20, 2013, which is the matter currently pending before this court (F068683).

Letter to Superior Court

On May 30, 2014, while this appeal was pending, appellate counsel wrote to the superior court and noted the abstract of judgment from the November 20, 2013, hearing erroneously stated that in case No. MF47715, defendant was ordered to pay a \$400 restitution fine (§ 1202.4, subd. (b)), and a \$400 parole revocation fine (§ 1202.45). Counsel noted that this court previously held that those fines should have been for \$200, which was the amount imposed when defendant was placed on probation in that case. Counsel asked the court to prepare an amended abstract of judgment to correct the restitution fines, and send the abstract to this court.

On July 1, 2014, the superior court filed an amended abstract of judgment which stated that in case No. MF47715, defendant was ordered to pay a \$200 restitution fine (§ 1202.4, subd. (b)), and a \$200 parole revocation fine (§ 1202.45).

DISCUSSION

As noted above, defendant's counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that defendant was advised he could file his own brief with this court. By letter on July 18, 2014, we invited defendant to submit additional briefing. To date, he has not done so.

After independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.